IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

COMPANY PETITION NO. 698 OF 2000

Ashar Industrial Cororation. .... Petitioners.

Versus

Oceana Textile Mills Pvt.Ltd. .... Respondent.

Mr. D. P. Shah for the Petitioners.

CORAM: A. M. KHANWILKAR, J.

DATE : 2ND AUGUST, 2005

P.C.:

Heard Counsel for the Petitioners. None appears for the Respondents, though served. No reply has been filed opposing this petition.

2. According to the Petitioners, they had supplied goods to the Respondent Company as per the requisition of the Company from time to time between November, 1997 and May 1998. The goods have been duly delivered to the Respondent Company and at no point of time the Respondent Company raised dispute regarding quality and/or quantity of the said goods. Aggregate amount of goods supplied from time to time by the Petitioners is stated to be in the sum of Rs.4,18,181.93.

3. As the said amount was not received inspite of repeated reminders, the Petitioners issued statutory notice on 6th April, 2000 calling upon the Respondent Company to pay the sum of Rs.4,18,181.93 which liability was duly acknowledged by the Respondent Company as on 28th October, 1999. The Petitioners also called upon the Respondent Company to pay agreed interest at the rate of 21 % p.a. from 28th November, 1999 till payment. Inspite of statutory notice, the Respondent Company neither offered to pay the amount as demanded nor sent any reply to the statutory notice.

4. In the circumstances, the present petition under Sections 433 and 434 of the Companies Act came to be filed by the Petitioners on 17th June, 2000. This petition was admitted on 4th October, 2000. The Petition has been duly advertised and published. Learned Counsel for the Petitioners states across the Bar that after admission of this petition, the Respondent Company in discharge of its liability offered 11 post-dated cheques to the Petitioner, out of which only 4 cheqeus have been encashed and remaining dishonoured. Inspite of publication and advertisement none appears for the Respondent Company nor any reply has been filed controverting the assertion raised in the petition. In other words, the assertion made in the

petition, which are supported by the documents placed on record, have remained unchallenged. It necessary follows that the Respondent Company has failed to rebut. In that sense the legal presumption against the Respondent Company arises that it is unable to pay its debts. In that situation, this Court has no option but to allow the prayer of the Petitioner for winding up of the Respondent Company.

5. Accordingly, this petition is made absolute in terms of prayer clauses (a) and (b).

Sd/-

(A.M.KHANWILKAR, J.)